

Clearly, a process which had all of the steps of Claim 17 and had some circulation of the cooking vapors would not infringe Claim 1 of the issued patent but would infringe Claim 17 of the present application. Thus, the reliable test for double patenting fails and the rejection under 35 U.S.C. §101 is believed clearly improper.

Next, the examiner rejected Claims 14 and 17 under the judicially created doctrine of obviousness type double patenting over Claims 1-3 of U.S. Patent No. 5,560,952. A terminal disclaimer is enclosed disclaiming the period of a patent issuing under the present application which would extend past the expiration of U.S. Patent No. 5,560,952. Also, under Section 804 of the M.P.E.P. such terminal disclaimer may be used to overcome an obviousness type double patenting rejection.

The rejection under 35 U.S.C. §103(a) of Claims 14 and 17 as being unpatentable over Benson Patent No. 4,297,942 in view of Bratton, et al. No. 4,701,340 has been considered. The examiner suggests that the Benson patent discloses all of the recited subject matter except a plurality of cooking phases generating cooking vapors following flame treatment. The examiner then suggests that it would be obvious to combine the Benson device with the Bratton device. However, such combination is illogical when one notes that the device of the Benson patent does not vent the cooking vapors along the exit conveyor, but instead exhausts the cooking vapors vertically through openings 33, 34. Note at the last sentence of the page headed "Columns 3 and 4" of the typed portion of the Specification of Benson, et al. provided by the examiner, it states:

"At the top, openings 33, 34 are provided in the inner shield and in the outer wall (at a top hood 30) respectively, to

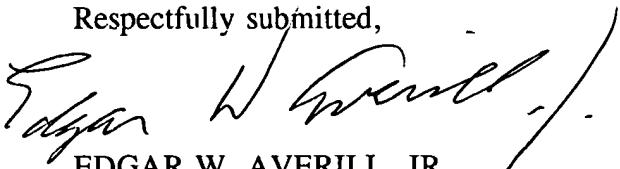
permit connection of the unit with an exhaust stack (not shown)
for exhaust of the vapors created during the treatment process
and for maintaining a flow of air for cooling the heat shield 31."

Thus, the attachment of the Benson char broiler, searing device, if connected to the Bratton, et al. impingement and steam oven, would not suggest the following essential feature of applicant's claims:

"aiming said color development and sealing flame so that the heat therefrom passes into the entrance of an elongated cooking chamber surrounding said moving belt, said cooking chamber having a product feed and a product discharge."

Neither of the cited references suggest this important and essential feature and thus it is believed that applicant's Claims 14 and 17 are allowable over the references of record. This feature of applicant's invention is a very important feature in that it utilizes the heat generated by the color development and sealing flame by passing it into the cooking chamber whereas Benson, et al. suggests the venting of this heat.

It is believed that applicant's claims are allowable in view of the enclosed terminal disclaimer and such action is respectfully requested.

Respectfully submitted,

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